

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSE ELIAS JUAREZ,
Petitioner,
v.
PAUL THOMPSON,
Respondent.

No. 2: 21-cv-0945 TLN KJN P

FINDINGS & RECOMMENDATIONS

Petitioner is a federal prisoner, proceeding without counsel, with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Petitioner argues that he is entitled to immediate release to a Residential Drug Treatment Program based on application of earned time credits to his sentence under the First Step Act.

Pending before the court is respondent's motion to dismiss. (ECF No. 9.) For the reasons stated herein, the undersigned recommends that respondent's motion to dismiss be granted.

Background

On May 25, 2017, petitioner was sentenced to serve 120 months in federal custody by the United States District Court for the Eastern District of Michigan for violating 21 U.S.C. §§ 846, 841(a)(1) (conspiracy to distribute controlled substance). (ECF No. 9-1 at 2.) Petitioner's projected release date, including speculative good conduct credit, is January 1, 2026. (Id.)

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1 On May 25, 2021, petitioner filed the pending habeas corpus petition pursuant to 28
2 U.S.C. § 2241 arguing that he is entitled to immediate release to a Residential Drug Treatment
3 Program based on application of earned time credits to his sentence under the First Step Act.
4 (ECF No. 1.)

5 On September 24, 2021, respondent filed the pending motion to dismiss. (ECF No. 9.)
6 Respondent moves to dismiss the petition for lack of Article III standing and ripeness, lack of
7 jurisdiction under 28 U.S.C. § 2241, and for failure to exhaust administrative remedies. (Id.)

8 On September 29, 2021, petitioner filed an opposition to the motion to dismiss. (ECF No.
9 10.)

10 Discussion

11 *The First Step Act*

12 The First Step Act was signed into law on December 21, 2018. Pub. L. No. 115-391, 132
13 Stat. 5194 (2018). The relevant portions of the First Step Act allow eligible prisoners to earn time
14 credits against their sentences for successfully completing certain “recidivism reduction
15 programming” or “productive activities.” 18 U.S.C. § 3632(d)(4). The Attorney General was
16 allowed 210 days after the First Step Act was enacted to develop and publish the Risk
17 Assessment Needs system, which the Bureau of Prisons (“BOP”) must use as a guide to
18 implement the programs. 18 U.S.C. § 3632(a). The Attorney General published the Risks and
19 Needs Assessment on July 19, 2019. The BOP then had 180 days, or until January 15, 2020, to
20 implement the system, complete inmate risk assessments, and then begin to assign prisoners to
21 appropriate evidence-based recidivism reduction programs. 18 U.S.C. § 3621(h).

22 Thereafter BOP was given an additional two years, or until January 15, 2022, to phase in
23 programming and provide “evidenced based recidivism reduction programs and productive
24 activities for all prisoners.” 18 U.S.C. § 3621(h)(2)(A-B). Moreover, during this “phase-in”
25 period, which has not expired, the BOP was empowered to exercise its own discretion as to how
26 and when to expand programs and activities, as well as offer the system’s incentives and rewards
27 as of the date of enactment of the First Step Act:

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Beginning on the date of enactment of this subsection, the Bureau of Prisons *may* begin to expand any evidence-based recidivism reduction programs and productive activities that exist at a prison as of such date, and *may* offer to prisoners who successfully participate in such programs and activities the incentives and rewards described in subchapter D.

§ 3621(h)(4) (emphasis added).

Ripeness

The ripeness doctrine is “drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction.” Nat’l Park Hosp. Ass’n v. Dep’t of the Interior, 538 U.S. 803, 808 (2003) (quoting Reno v. Cath. Soc. Servs., Inc., 509 U.S. 43, 57 n.18 (1993)). It “is to prevent the courts, through premature adjudication, from entangling themselves in abstract disagreements” when those disagreements are premised on “contingent future events that may not occur as anticipated, or indeed may not occur at all.” Thomas v. Union Carbide Agric. Prods. Co., 473 U.S. 568, 580-81 (1985) (citations omitted); Wolfson v. Brammer, 616 F.3d 1045, 1057 (9th Cir. 2010); see also Simmonds v. INS, 326 F.3d 351, 357 (2d Cir. 2003) (evaluating ripeness in the context of a habeas petition, stating “[p]rudential ripeness is ... a tool that courts may use to enhance the accuracy of their decisions and to avoid becoming embroiled in adjudications that may later turn out to be unnecessary or may require premature examination”).

The majority of courts that have considered claims regarding the BOP’s alleged failure to award earned time credits under the First Step Act have concluded that these claims are not ripe at this time because the BOP has until January 15, 2022, to “phase-in” the evidence-based recidivism programs and productive activities for all prisoners. Khounmany v. Gutierrez, 2021 WL 4394591, at *4 (C.D. Cal. Aug. 2, 2021) (“The majority of courts to have considered claims regarding the BOP’s failure to award earned time credits under the First Step Act have concluded that such claims are not ripe at this time because the BOP has until January 15, 2022 to “phase-in” the evidence based recidivism reduction programs and productive activities for all prisoners.”) (citing Novotny v. Yankton FPC, Warden, 2021 WL 3089287, at *1 (D. S.D. July 21, 2021) (inmates do not have standing to seek an order requiring the BOP to apply earned time credits

1 toward prerelease custody before January 15, 2022); Diaz v. Warden, FCI-Ray Brook, 2021 WL
 2 3032694, at *2-3 (N.D. N.Y. July 19, 2021) (challenge to BOP's calculation of earned time credit
 3 under the First Step Act was not ripe for review); Hand v. Barr, 2021 WL 392445, at *5 (E.D.
 4 Cal. Feb. 4, 2021) ("because the Act does not require BOP to provide evidence-based recidivism
 5 reduction programs and productive activities for all prisoners until January 2022, the Court finds
 6 that petitioner's claims regarding earned time credits and evidence-based recidivism reduction
 7 programs are not ripe"), findings and recommendation adopted by 2021 WL 1853295, at *2 (E.D.
 8 Cal. May 10, 2021) (given that the regulations governing the First Step Act time credits have yet
 9 to be codified, the court agreed that the petitioner's claims regarding First Step Act time credits
 10 were not ripe); Cohen v. United States, 2021 WL 1549917, at *3 (S.D. N.Y. Apr. 20, 2021)
 11 (claims challenging calculation of earned time credits under the First Step Act was not ripe);
 12 Kennedy-Robey v. FCI Pekin, 2021 WL 797516, at *3-4 (C.D. Ill. Mar. 2, 2021) ("The use of the
 13 word 'may' indicates that, while it is permissible for the BOP to award time credits under the
 14 statute at any time after the date of enactment, the BOP is not required to do so"; thus, the
 15 petitioner did not have standing to demand that the BOP apply her time credits as she
 16 calculated)); see also Rios v. Thompson, 2021 WL 5040357 (E.D. Cal. Oct. 29, 2021) (claim for
 17 immediate release to home confinement based on credits awarded under the First Step Act not
 18 ripe); Cisneros-Gutierrez v. White, 2021 WL 4460533 (E.D. Cal. Sept. 9, 2021) (claim for
 19 immediate release based on credits awarded under the First Step Act not ripe).

20 The undersigned agrees with the reasoning of the courts cited above and finds that
 21 petitioner's claim for immediate release to a Residential Drug Treatment Program based on
 22 application of credits earned under the First Step Act is not ripe.¹

24 ¹ In support of the motion to dismiss, respondent submitted the declaration of BOP Senior
 25 Correctional Programs Specialist Christopher Liwag. (ECF No. 9-1.) Mr. Liwag states that
 26 petitioner is eligible to earn credits under the First Step Act. (Id. at 11.) Mr. Liwag states that
 27 when the phase-in time is reached in January 2022, and if petitioner meets other criteria for
 28 eligibility, petitioner will be eligible to apply his credits toward discretionary pre-release custody
 in accordance with the appropriate calculations. (Id.) "Because BOP has not completed its
 phase-in, the precise calculations for petitioner and amount of credit he can apply, as well as their
 precise application, are speculative." (Id. at 11-12.)


1 In the petition, petitioner cites Goodman v. Ortiz, 2020 WL 5015613 (D.N.J. Aug. 25,
2 2020), where the district court found that the BOP need not wait until January 15, 2022, to
3 implement the at-issue sections of the First Step Act. However, the undersigned joins the
4 numerous courts that have respectfully disagreed with the Goodman decision. Diaz v. Warden,
5 2021 WL 3032694, at *2-3 (N.D. N.Y. July 19, 2021) (acknowledging Goodman but noting that
6 the majority of courts disagree with that opinion); Holt v. Warden, 2021 WL 1925503, at *5 (D.
7 S.D. May 13, 2021) (collecting cases that have disagreed with the Goodman opinion); Kennedy-
8 Robey, 2021 WL 797516, at *4 (C.D. Ill. March 2, 2021) (“If immediate implementation were
9 mandated, Congress would have used the word ‘shall’ and not ‘may’ in 18 U.S.C. § 3621(h)(4)).

10 Because the undersigned finds that petitioner’s claim is not ripe, there is no need to
11 address the other grounds raised in respondent’s motion to dismiss.

12 Accordingly, IT IS HEREBY RECOMMENDED that respondent’s motion to dismiss
13 (ECF No. 9) be granted on the grounds that petitioner’s claim is not ripe.

14 These findings and recommendations are submitted to the United States District Judge
15 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
16 after being served with these findings and recommendations, any party may file written
17 objections with the court and serve a copy on all parties. Such a document should be captioned
18 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
19 objections shall be filed and served within fourteen days after service of the objections. The
20 parties are advised that failure to file objections within the specified time may waive the right to
21 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

22 Dated: November 15, 2021

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24 KENDALL J. NEWMAN
25 UNITED STATES MAGISTRATE JUDGE

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